



Department of Energy

Washington, DC 20585

November 26, 2007

The Honorable John J. Sullivan
General Counsel
United States Department of Commerce
1401 Constitution Avenue, N.W., Room 5870
Washington, D.C. 20230

Dear Mr. Sullivan:

This letter is in response to the Department of Commerce's request dated October 24, 2007, for the Department of Energy's (DOE) views concerning two administrative appeals pending before the Secretary of Commerce (Secretary) under the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 et seq.). The projects in question are Weaver's Cove Energy, LLC's (Weaver's Cove) proposed liquified natural gas (LNG) terminal in Fall River, Massachusetts and Mill River Pipeline, LLC's (Mill River) two associated pipeline projects. The applicants have asked the Secretary to override objections to their requests for Federal consistency certifications made by the Commonwealth of Massachusetts. DOE offers its views on the three elements the Secretary must consider to find the projects consistent with the objectives of the CZMA.¹

The Department of Commerce's regulations governing appeals from a state's objection under the CZMA provide that a project will be considered consistent with the objectives of the CZMA if the project satisfies three criteria (15 C.F.R. 930.121): first, the activity must further the national interest as articulated in §302 or §303 of the CZMA, in a significant or substantial manner (15 C.F.R. 930.121(a)); second, the national interest furthered by the activity must outweigh the activity's adverse coastal effects, when those effects are considered separately or cumulatively (15 C.F.R. 930.121(b)); and, third, there must be no reasonable alternative available that would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's coastal management program (15 C.F.R. 930.121(c)). With respect to consideration of alternatives, the regulations provide that the Secretary shall not consider an alternative unless the state agency submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's coastal zone management program (15 C.F.R. 930.121(c)).

¹ We note that the letter requesting DOE's views on these appeals only requested comments on one of the two possible grounds (i.e., national security) by which the Secretary may override a state objection under the CZMA. In this letter, DOE focuses on the other ground for an override by the Secretary (i.e., consistency with the national objectives of the CZMA) because the arguments of the parties rely principally on this ground as the basis for the Secretary's decision.



With regard to the first element, DOE believes that the proposed projects further the national interest by promoting energy development. Natural gas represents about a quarter of all energy consumed in the United States. It is used for electricity generation, as an industrial feedstock, and for many other uses. The advantages of natural gas have grown increasingly evident in recent years: it is a relatively clean fossil fuel; gas production and use often entails lower capital costs, shorter construction lead times, and higher efficiencies; and, combustion of natural gas produces lower emissions of pollutants than other energy sources. Giving American consumers greater access to natural gas will go a long way to helping secure our nation's energy position and to creating more stable energy environments.

Additionally, the CZMA states that priority consideration should be given to coastal dependent uses and orderly processes for siting major facilities related to, among other things, energy (16 U.S.C. 1452(d)(2)). When the Secretary has addressed the first element in prior decisions related to energy projects, he has consistently found that the development of energy resources furthers the national interest.² Further, the Secretary issued guidance with implementing regulations in 2000, which stated that projects involving the siting of coastal dependent energy facilities typically fulfill the national interest requirement.³

The Secretary need not reach the third element to make a determination in these appeals. The CZMA regulations of the Department of Commerce provide that the Secretary shall not consider an alternative unless the state agency submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's coastal zone management program. In its reply to both the Weaver's Cove and Mill River briefs, the Commonwealth of Massachusetts did not submit any such statement.⁴

Finally, the Secretary must balance the proposed project's furtherance of the national interest with any potential adverse coastal effects. While DOE believes this balancing is appropriately within the discretion of the Secretary, we note three factual items. First, in its Final Environmental Impact Statement prepared for the Weaver's Cove project, the Federal Energy Regulatory Commission (FERC) concluded that if the project "is constructed and operated in

² For example, in the recent decision regarding the Islander East Pipeline, the Secretary recognized that "Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources. Thus element [1] normally will be satisfied on appeal." Decision and Findings in the Consistency Appeal of the Islander East Pipeline Company, LLC, May 5, 2004, at pages 3 - 4, citing to Decision and Findings in the Drilling Discharge Consistency Appeal of Mobil Oil Exploration & Prod. Southeast, Inc., Sept. 2, 1994, at p. 13.

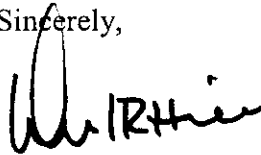
³ Final Rule on Federal Consistency, 65 F.R. 77124, 77150 (Dec. 8, 2000).

⁴ See Respondent's brief at p. 24.

accordance with Weaver's Cove Energy's proposed mitigation and FERC staff's recommended mitigation measures, the proposed action . . . would have limited adverse environmental impacts."⁵ Second, the proposed projects are to be constructed in a Designated Port Area (DPA), an area within the coastal zone established under Massachusetts law as being specifically designated for the preservation and enhancement of marine industrial development. Our review of the record shows that this designation is quite fitting for the place at issue. Both banks of the Taunton River are densely populated with existing development. In fact, the site of the proposed projects has been a petroleum products marine terminal and storage facility for the past 80 years. Finally, we are aware that the Coast Guard has recently issued a letter finding that the proposed route for vessels to service the Weaver's Cove facility is "unsuitable from a navigation safety perspective."⁶ However, navigation suitability does not itself present an adverse coastal effect as contemplated by the CZMA. We respectfully suggest that these facts support a finding that the significant national benefits of the projects outweigh any potential adverse coastal effects.

Thank you for the opportunity to comment on the two pending appeals. If you have any questions or require additional information, please contact Salo Zelermyer, Senior Counsel, at (202) 586-5281.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hill", written over the printed name.

David R. Hill
General Counsel

⁵ 70 FR 30433 (May 26, 2005).

⁶ Letter of October 24, 2007 to Gordon Shearer, CEO, Weaver's Cove, from Roy A. Nash, U.S. Coast Guard, Captain of the Port, Southeast New England. We note, however, that this letter is not as yet part of the consolidated record for decision in the pending appeals.